WP(C) 116/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

The dispute raised in this batch of writ petitions is in respect of appointment, promotion, regularization, provincialisation and posting of the Panchayat employees, more particularly the Panchayat Secretaries. The writ petitions have been heard analogously and are being disposed of by this common judgment and order.

2. The first writ petition being W.P.(C) No. 484/06 has been filed for an appropriate direction to the respondents for promotion of the members of the petitioner's Association to the next higher grades including the grade of Panchayat Secretary. It will be pertinent to mention here that by order dated 12.04.06 it was provided that in the event of making any promotion to the post of Gaon Panchayat (G.P.) Secretary, same would be subject to the outcome of the writ petition.

3. In the second writ petition being W.P.(C) No. 325/07, the petitioner has prayed for a direction to the respondents to absorb him as Panchayat Secretary in the particular G.P., namely Islam Nagar G.P. and to include his name in the order dated 23.11.06, impugned in the other writ petitions. By this order dated 23.11.06, the Panchayat Secretaries named therein have been redeoployed in the respective G.Ps. indicated in the order. The petitioner in this writ petition was appointed as Secretary of the G.P. by the President of the G.P. but there is no sanction and/or approval on behalf of the Govt. Thus in the garb of the prayer for inclusion of his name in the order dated 23.11.06, the petitioner has virtually prayed for regularization and provincialisation of his service.

4. In the other batch of writ petitions, the prayer is to set aside and quash the aforesaid order dated 23.11.06 by which regularized and provincialised Panchayat Secretaries have been redeployed in the respective G.Ps. as indicated in the order. The challenge has been made in view of the fact that the petitioners, who are earlier allowed to hold the posts of Secretaries on in-charge basis, would be deprived of such charge. By the impugned order, the incumbents named therein have been redeployed to the respective G.Ps. as shown in the order. Be it stated here that the G.P. Secretaries who have been redeployed by the impugned order are all regular Panchayat Secretaries unlike the petitioners who are only holding the charge of post of the Secretaries. Their substantive ranks are in various posts of the lower cadres.

5. I have heard Mr. A.S. Choudhury and Mr. H.R.A. Choudhury, learned Sr. counsel along with Mr. N. Dhar, learned counsel for the petitioners. I have also heard Mr. R.K. Borah along with Ms. R. Chokraborty, learned State counsel representing the State respondents. Ms. B. Bhuyan, learned counsel has argued on behalf of the private respondents in W.P.(C) No. 484/06. Mr. Borah, learned State counsel has also produced the records and I have gone through the same.

6. The petitioner in the first writ petition being W.P.(C) No. 484/06 is the Association representing both Grade-D and Grade-C employees. As indicated above, the prayer made in the writ petition is to provide promotion to the members of the Association working in the Grades of Tax Collector, Road Mohorar etc. to the promotional post of Head Assistant, UDA, Accountant, G.P. Secretary etc. For the Grade-IV employees represented by the petitioner, the prayer is for promotion to the next higher grades of Tax Collector and Road Mohorar.

7. The prayer made in the second writ petition being W.P.(C) No. 325/07 has been noted above. In the other writ petitions, it is the grievance of the petitioners that the respondents ought not have redeployed the Panchayat Secretaries

to their places of posting so as to deprive them even from holding the post of Secretaries on In-Charge basis. There is no dispute that none of the petitioners have held the post of Secretaries on regular basis, but have been allowed to hold the posts in absence of any regular incumbents. Referring to various earlier communications, minutes, discussions, Service Order etc., it is their case that they have long been deprived of their legitimate promotion as G.P. Secretaries and taking recourse to posting of G.P. Secretaries to their respective places of posting, apart from taking away the charge of post of Secretaries from them, their chance of promotion have also been put to jeopardy.

8. The respondents have filed counter affidavits in three writ petitions, namely W.P.(C) Nos. 6488/06, 6332/06 and 6387/06. It has been stated that consequent upon the abolition of G.Ps. in 6th Schedule areas, the regular and full-fledged G.P. Secretaries have been withdrawn from the said area under BTAD and have been redeployed to non 6th Schedule area. In this connection, the statements made in paragraph-8 of the affidavit in opposition filed in W.P.(C) No. 6332/06 is quoted below.

8. That your deponent denies that statement made in paragraph-7 of the writ petition and further states that the respondent No. 5 is a full fledged Gaon Panchayat Secretary holding the post of Gaon Panchayat Secretary whereas the writ petitioner is a Tax Collector cum road Mohara holding the post of TC/RM of Isabpur Gaon Panchayat. As per staffing pattern here is one post of Gaon Panchayat Secretary, one post of TC/RM and one post of Peon cum Chowkidar in each Gaon Panchayat of the State of Assam. Consequent upon the abolition of the Gaon Panchayats in Sixth scheduled areas the private respondent, being the full fledged Gaon Panchayat Secretary, is withdrawn from the Sixth Schedule area under BTAD and redeployed to Non-sixth Scheduled areas by the respondent No. 2 and posted at Isabpur Gaon Panchayat against the existing sanctioned vacant post in the same capacity as Secretary of Isabpur Gaon Panchayat and not against the post of TC/RM which the writ petitioner is holding.

9. In the affidavit filed by the respondents they have referred to the orders by which the services of 1707 numbers of G.P. Secretaries have been regularized and provincilsied. It has been stated that although a good number of posts of G.P. Secretaries have been created, but due to the abolition of the existing G.Ps. in the 6th Schedule areas of BTC, some of the G.P. Secretaries had to be redeployed in non 6th Schedule area and consequently the impugned notification dated 23.11.06 had to be issued. In paragraph-13 of the affidavit in opposition following statements have been made.

13. That your deponent denies the statement made in paragraph-13 of the writ petition and further states that the petitioner who is holding the post of TC/RM is not formally allowed to hold the charges as in-charge, Secretary of any Gaon Panchayat by the competent authority. As such, the claim of the petitioner is baseless and pointless and when the respondent No. 5 on receipt of the order dated 23.11.06 issued by the respondent No. 2 approached the respondent No. 4 and submits the joining report but the petitioner refused to hand over the informal charges of the Gaon Panchayat which also attracts misconduct and insubordination to the superior official. The writ petitioner acted as self-styled Gaon Panchayat Secretary which is unbecoming of a Government servant and in violation of the Assam Services (Disciplinary and Appeal) Rules, 1964.

10. As regards the claim of the petitioners that in terms of the minutes of discussion and the Service Order, they are entitled to get promotion, it has been stated that the petitioners cannot claim automatic promotions and that they will have to give way to the regular Panchayat Secretaries and cannot continue to hold the charge of the post of Panchayat Secretaries. Regarding non finalization of the recruitment rules, it has been stated that same is under process.

12. The respondents No. 4 and 5 in W.P.(C) No. 484/06 although have not filed any separate affidavit, but the learned counsel appearing for them has referred to the statement made in the application being Misc. Case No. 2254/06 by which they got impleaded as party respondents. In the application they have referred to their appointments and consequent regularization and provincialisation of their services. It has been stated that since they are regular G.P. Secretaries, there is nothing wrong in posting them against vacant posts and that the petitioners cannot claim that they should be allowed to hold the charge indefinitely.

12. I have considered the submissions made by the learned counsel for the parties and the materials on record. Before proceeding to deal with the other writ petitions, I first deal with the first writ petition being W.P.(C) No. 484/06 and second writ petition being W.P.(C) No. 325/07. In the first writ petition, the prayer of the petitioner has been noted above. It is case of the petitioners that since they have been working in different posts in Grade - C and D cadres and the minutes of discussion held on 06.07.93 (Annexure-3) provided for consideration of their case for further advancement in service and finalisation of service rues, the respondents are duty bound to consider their case for promotion to various higher grades including that G.P. Secretaries. Referring to the various provisions of the Service Order called, the Provincialisation of Panchayat Employees Service Orders, 2003, the petitioners have contended that the promotion to the post of Panchayat Secretaries can be effected only on the basis of seniority-cum-merit from amongst the suitable Tax Collector/ Road Mohorar.

13. As per the provision of the Assam Panchayat Employees (Provincialisation) Act, 1999, the employees of the Panchayats under the State Govt. shall be deemed to have been provincialised on and from on the appointed day. The service of the members of the petitioners' Association are provincialsied one. Prior to the Act of 1999, the Govt. of Assam in the Panchayat & Rural Development Department, provincialised the services of 4565 posts of Panchayat employees of G.P. and Mahkuma Parishad. It will be pertinent to mention here that the services of the G.P. Secretaries who have been redeployed to non 6th Schedule area by the impugned order dated 23.11.06 have already been regularized and provincialised and these orders of regularization and provincialisation are not under challenge and only the order of their redeployment has been put to challenge since according to the petitioners, same has affected their right to continue as in-charge Panchayat Secretaries.

14. As noticed above, in the second writ petition being W.P.(C) No. 325/07, the petitioner who was appointed as the Secretary of the G.P. by the President, has claimed that his name along with G.P. should be included in the impugned order dated 23.11.06. Thus, by making such a prayer, the petitioner seeks regularization and provincialisation of his service. He was appointed by the President of the G.P. without any sanction behind of the Govt. Thus, the petitioner cannot claim regularization/provincialisation of his service on the strength of the appointment made by the President of the G.P. Such appointment appears to be on honorary basis. Thus in the no relief can be granted to the petitioner.

15. Coming to the first writ petition considering the prayer made, only direction which can be issued is to provide consideration of the case of the members of the petitioners' Association in accordance with the rules and the guidelines. No direction can be issued for promotion of the members. No materials have been furnished enabling the Courts to issue any direction for promotion to the members of the Association. Various parameters and yardsticks will have to be followed before affecting any promotion. If the members of the petitioners' Association are otherwise eligible for promotion, the respondents shall do the needful towards consideration of their case for promotion.

16. In other writ petitions, the petitioner seek to continue as in-charge Secretaries of various G.Ps. They are aggrieved by the redeployment order dated 23.11.06 as the same has affected them from functioning as In-Charge Secretaries.

They will only be deprived of functioning as in-charge Secretary. Merely because they were allowed to take charge of the post of Secretaries as in-charge, they cannot claim that they should be allowed to continue indefinitely till such time their cases are considered for promotion as G.P. Secretaries on regular basis. When the regular Secretaries are available for posting, the petitioners cannot claim that such posting should not be made. The kind of situation in which the services of the regular Secretaries of the G.P. had to be withdrawn and redeployed to non 6th Schedule area has been noted above. There is no gainsaying that in any kind of appointment and/or promotion, the incumbents under ad hoc and/or stop gap arrangement will have to make way for the regular recruits and/or promotees.

17. During the course of hearing an argument was advanced that the very basis of abolition of the G.Ps. in the 6th Schedule area which has resulted in the necessity to redeploy the G.P. Secretaries to non 6th Schedule area is illegal. Another argument advanced was that the services of the Panchayat Secretaries who were appointed on temporary basis could not have been regularized and provincialised. The regularized and provincialised Panchayat Secretaries were initially appointed on temporary basis and after continuation in service for years together, their services were regularized and provincialised by various orders. These orders are not under challenge. Further, the petitioners themselves are the beneficiaries of the orders passed towards provincialisation of their services. The arguments advanced during the course of hearing are also without there being any pleadings to that effect.

18. For the foregoing reasons the plea of the petitioners that they should be allowed to continue as the in-charge Secretaries of various G.Ps. cannot be accepted. When the regular Secretaries are available for posting, the petitioners will have to make room for them. It is not a case of termination of their services, but they will continue in their substantive grades.

19. In view of the above, the writ petitions merit dismissal which I accordingly do subject to the observation made in W.P. (C) No. 484/06. The writ petitions are dismissed. However there shall be no order as to costs.